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19-Jan-2007

Katie Hales  
Katie Hales

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Curtis A. Richardson et al. )  
Serial No.: 10/607,603 ) Group Art Unit: 2856  
Filed: 06/27/2003 ) Examiner: Alejandro, Raymond  
Title: GAS-FILLED GASKET FOR A SOLID-OXIDE FUEL CELL ASSEMBLY

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

In response to the Notification of Non-Compliant Appeal Brief mailed December 21, 2006, please substitute the enclosed Appeal Brief for the one mailed November 10, 2006.

The Notification states that the brief filed in November did not contain a concise explanation of the subject matter defined in the independent claim. In response, Section V. Summary of Claimed Subject Matter has been amended to provide a concise explanation of claim 5, the sole independent claim in the case, and to refer to the specification by page and line number and to the drawings by reference numeral. Section VI Argument has been amended to incorporate the discussion that had been included in the Summary, but was not directed specifically to claim 5.

Please charge the fee for this petition and any additional fees to Delphi Technologies, Inc., Deposit Account 50-0831.

Respectfully submitted,

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Alexandria, VA 22313

**APPEAL BRIEF**

Sir:

This follows the Notification of Non-Compliant Appeal Brief mailed December 21, 2006.

Further to the Notice of Appeal filed June 13, 2006, Applicants herewith respectfully present their Brief on Appeal.

The Commissioner is hereby authorized to charge any fees associated with the filing of the Appeal Brief to Deposit Account No. 50-0831.

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**I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is Delphi Technologies Inc.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences known to Applicants, Applicants' legal representatives, or assignee that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 5-7 are pending in the application and are set forth in Appendix A. Claims 5-7 stand finally rejected. Applicants appeal the final rejection of all claims 5-7. Original claims 1-4 and 8 have been cancelled.

**IV. STATUS OF AMENDMENTS**

Claims 5-7 were amended in Applicants' Amendment mailed December 15, 2006. A corrected listing was presented in the Reply to Notice of Non-Compliant Amendment mailed January 11, 2006.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 5 sets forth the essential features of Applicants' fuel cell assembly. Claim 5 is directed to a fuel cell assembly, i.e., fuel cell assembly 43 in Fig. 4, see page 5, lines 7-10. The assembly includes first and second components in spaced, parallel relationship, see plates 41 and 42 in Fig. 4; page 5, lines 7-10. The claim further calls for a gasket, see gasket 10 in Figs. 1, 2 and 4, and gasket 10' in Fig. 3, that is formed of first and second sheet metal elements 31 and 32, see particularly Figs. 2 and 4, and page 4, lines 21-23. The gasket includes a planar region 26 that has an opening, e.g. openings 12, 14, 16, 18, 20 and 22 in Fig. 1, for gas passage between the first and second components, page 4, lines 9-13. The gasket also includes a pillow structure 28 in Fig. 1, 2 and 4, and 28' in Fig. 3 that surround the openings, see page 4, lines 16 and 25-26. The pillow structure 28, 28' defines a gas filled chamber 30, 30' enclosed within the metal sheets, see page 4, lines 23-26. Still further, as recited in the claim, the pillow structure is diffusion bonded to the first and second components to form a sealed joint therebetween, page 5, lines 4-16.

Claims 6 and 7 are dependent upon claim 5 and so incorporate the elements thereof.

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## **VI. ISSUES**

1. Claim 5 was rejected under 35 U.S.C. § 103 as unpatentable over PCT Patent Application Publication WO 01/17048, by Nagai, in view of United States Patent No. 6,231,053, issued to Wakamatsu in 2001.
2. Claim 5 was rejected under 35 U.S.C. § 103 as unpatentable over the aforementioned PCT Publication by Nagai in view of Japanese patent publication 06-96783, referred to as JP '783.
3. Claim 5 was rejected under 35 U.S.C. § 103 as unpatentable over the aforementioned PCT Publication by Nagai in view of United States Patent Application Publication US 2004/0053099, by Franklin et al.
4. Claims 6 and 7 were rejected under 35 U.S.C. § 103 as unpatentable over the aforementioned PCT Publication by Nagai in view of the aforementioned Wakamatsu, or JP '783 or the combination of the aforementioned Franklin et al. and United States Patent Application Publication No. US2004/0150162, by Inagaki et al.

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## **VII. ARGUMENT**

### *Claim 5 Rejection based upon Nagai in view of Wakamatsu*

Applicants' invention relates to a gasket 10 for use in a fuel cell assembly 17, see Figs. 1-4, particularly Fig. 4. The assembly includes a plurality of fuel cells. Each fuel cell comprises components that define compartments for containing a reducing gas, e.g., hydrogen, and compartments for containing oxidizing gas, e.g., oxygen, separated by a membrane. The components include plates 41 and 42 in Fig. 4. To increase the electrical output, a plurality of cells are arranged in a stack to form the assembly. Within the stack, the components are spaced apart by gaskets 10. The gaskets have openings 12, 14, 16, 18, 20 and 24 that surround openings in the peripheral regions of the plates 41 and 42 and cooperate with them to form manifolds for conveying the reactant gases to the cells and removing product gases.

The gaskets of the present invention have features to improve their performance, particularly at elevated temperatures.

First, gaskets 10 of the present invention are formed of metal, page 4, lines 21-23. During operation, the temperature of the fuel cell assembly increases. Metal gaskets allow the fuel cell to operate at higher temperatures at which polymeric materials tend to degrade. The metal gaskets withstand the higher temperatures, and so provide a more durable assembly and extend the useful life of the assembly. This is particularly

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advantageous for fuel cells that employ reducing gas that is reformed gas manufactured by reforming hydrocarbon compounds at elevated temperatures, because the reformed gas may be fed into the assembly at the elevated temperature without cooling.

The metal gaskets of the present invention maintain the desired spaced relationship between the components. For this purpose, the metal gaskets 10 comprise a pillow structure 28 in Figs. 1-2, 28' in Fig. 3, clearly shown, but unnumbered in Fig. 4, that defines a gas-filled chamber 30 or 30'. During operation, the assembly experiences thermal cycling that causes the components to expand and contract. The gas within the chamber of the pillow structure expands and contracts to maintain the gasket in contact with the adjacent components, and so maintain the separation between the components.

Pillow structures 28 or 28' of the metal gaskets of the present invention form hermetic seals to the adjacent components about the openings that form the manifolds to convey gases to and from the reaction compartments. As discussed above, the gas within the chambers of the pillow structures expands and contracts to maintain the gasket pressed against the adjacent components, page 4, lines 27-30. Also, the pillow structure is diffusion bonded to the adjacent components, page 5, lines 4-16. The result is a hermetic seal that is not broken despite thermal cycling of the fuel cell assembly during use.

The rejection points to Fig. 2 in Nagai. (For purposes of the discussion herein,

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reference is made to United States Patent No. 6,720,103, issued to Nagai in 2004.) Nagai provides an arrangement that is formed of elastic resin gasket sheets 6 and 7, col. 3, lines 29-30. The sheets are composed of polyester, polyamide, polyimide, and polyethylene naphthalate, col. 4, lines 49-51. A stainless steel spacer sheet 5a is interposed between the sheets, col. 4, lines 57-58. The spacer 5a is a critical component of Nagai necessary to maintain separation between the separators 2 and 3, col. 4, lines 34-40. It is significant that the spacer region does not seal the gap between the adjacent components. Rather, sealing in Nagai is provided by gaskets 8 and 9, which are formed of cured rubber and are located apart from spacer 5a, col. 3, lines 41-49.

Claim 5 calls for a gasket that is formed of metal sheets. Nagai teaches gaskets 8 and 9 that are formed of rubber. Even if the entire edge structure is considered as a gasket, as the rejection does, the edge structure in Nagai is formed of polymeric sheets. Nothing in Nagai suggests replacing the polymeric material with metal. Claim 5 calls for a gasket that includes a pillow structure. The rejection points to the region of spacer 5a as corresponding to the pillow structure. First, it is precisely because the arrangement in Nagai is formed of polymeric sheets and not metal that Nagai must provide a metal spacer to separate the components. The polymeric sheets do not provide sufficient rigidity to support the components, particularly at elevated temperatures. On the other hand, because of the metal spacer 5a, the region is not a pillow structure. Implicit in a pillow structure is a suitable



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compliance that is exactly opposite the object of the spacer in Nagai. Still further, claim 5 calls for the pillow structure to be diffusion bonded to the components to form a sealed joint therebetween. Nagai does not bond the spacer region to the adjacent components, and provides gaskets 8 and 9 for sealing. Thus, Nagai does not teach or suggest Applicants' invention in claim 5.

The rejection points to the empty spaces to the sides of the spacer 5a in Nagai. However, the critical spacer component defines the gap between the adjacent components and is formed of solid metal. Because of the metal spacer, the air spaces are nonfunctional, and the overall structure is designed to maintain the separation between the adjacent components, and so is essentially unyielding. That is, the spacer structure is hard, and is neither soft nor compliant nor any other property attributable to a pillow. Further, it is precisely because the edge structure is formed of compliant polymeric sheets, and not metal sheets, that Nagai needs the spacer. Thus, the spacer region in the Nagai cannot be fairly characterized as a pillow structure corresponding to Applicants' invention.

The rejection acknowledges that Nagai describes polymeric sheets, not metal sheets, as in Applicants' invention. The rejection points to Wakamatsu to show a gasket having a metal sheet.

Wakamatsu describes a gasket 1 that comprises a frame 2 that may be formed of

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metal, col. 3, line 45-52. Frame 2 is covered by sealant 6 composed of elastomeric material, preferably a liquid rubber vulcanizate, col. 3, lines 62, to col. 4, line 17. Thus, the gasket in Wakamatsu comprises metal bounded by elastomeric material and is like Nagai in this regard. It does not show a gasket formed of metal sheets that are bonded together, or define a gas-filled chamber or are diffusion bonded to the adjacent components. Thus, Wakamatsu does not teach or suggest Applicants' invention in claim 5.

Even if combined, the references do not lead to Applicants' invention. There is nothing in either reference that points the practitioner to a gasket that is made of bonded metal sheets and not out of polymeric elements. Polymeric materials are known to the practitioner to be compliant and to form good seals, in contrast to metals. Since the references do not contemplate a gasket formed out of metal sheets, they do not point to the pillow structure in Applicants' metal gasket that defines a gas-filled chamber and is bonded to the components to form a sealed joint. Yet it is because of the pillow structure and the diffusion bonding that Applicants' invention is uniquely able to avoid the problems of a solid metal spacer across the gap as shown in Nagai, and to eliminate polymeric materials that tend to degrade at the elevated operating temperature of the fuel cell.

Claim 5 is directed to Applicants' fuel cell assembly that includes a gasket formed of sheet metal elements and having a planar region at which the sheet metal elements are bonded. Neither Nagai nor Wakamatsu show a gasket formed of metal sheets bonded

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together. Claim 5 calls for a pillow structure that includes a gas-filled chamber. Because of the metal spacer, the spaces about the spacer in Nagai do not make the region a pillow structure; and since the arrangement is formed of polymer not metal, there is nothing in Nagai to suggest eliminating the metal spacer to allow the space to act as a pillow structure. Still further, claim 5 recites that the sheet metal elements are diffusion bonded to the components to form a sealed joint. Diffusion bonding is a metallurgical bond formed between metals, in contrast to adhesive bonding and the like. Nagai forms a seal by providing separate gaskets 8 and 9, and does not contemplate to bond the sheets in the region of the spacer. Wakamatsu also uses a polymeric bead to form the seal. Because both references rely on polymeric materials to form the seal, neither contemplates a metallurgical bond. For these reasons, the practitioner, aware of Nagai and Wakamatsu, is not lead to Applicants' fuel cell assembly in claim 5.

In the Advisory Action mailed April 27, 2006, an attempt is made to justify the rejection by interpreting piecemeal sections of the claim wording in a manner to read on the cited art, particularly Nagai. The standard in 35 U.S.C. § 103(a) is whether "the subject matter as a whole would have been obvious" from the cited art. A fair reading of the teachings of Nagai does not lead the skilled practitioner on an obvious path to Applicants' invention. Nor does Wakamatsu lead the practitioner to make obvious changes to the teachings of Nagai so as to arrive at the Applicants' invention. A reading of the claim as a

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whole reveals the differences. The differences are not obvious from the prior art. And so, Applicants have met the standard of Section 103(a) and are entitled to a patent.

Accordingly, it is respectfully requested that the rejection of the claim 5 based upon Nagai and Wakamatsu, be reconsidered and withdrawn, and that the claim be allowed.

*Claim Rejection based upon Nagai in view of JP '783*

Claim 5 was rejected under 35 U.S.C. § 103 as unpatentable over Nagai in view of Japanese patent publication 06-96783, referred to as JP '783.

The rejection refers to the Abstract of JP '783, but did not include an English translation thereof. In the discussion herein, reference is made to an English translation of JP '783 obtained from the database of the Patent Abstracts of Japan, a copy of which was enclosed with Applicants' Response mailed June 13, 2006.

For all the reasons set forth above, Nagai does not show a gasket formed of metal sheets that are bonded together. Because the metal spacer is a critical element in Nagai, it does not suggest to provide a pillow structure between the metal sheets, which allows the metal sheets to be used as a gasket in Applicants' invention. Further, because Nagai teaches the use of separate gaskets apart from the spacer region, there is nothing to suggest bonding the region to the adjacent components to form a sealed joint, as in Applicants' invention.

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JP '783 discloses a gasket 21 formed of a silicone sheet, Example 1, paragraph 0012 (although the translation reads "silicon," the practitioner would understand that silicone was intended). Example 2 describes foam rubber sheets about a metal sheet, paragraph 0013. Nothing in JP '783 shows a gasket formed by metal sheets bonded together and diffusion bonded to the adjacent components. Without this, even if combined, JP '783 does not lead the practitioner to replace the polymer sheets in Nagai with metal sheets. Moreover, there is nothing in JP '783 to not lead the practitioner to eliminate the metal spacer from Nagai to form a pillow structure, as in Applicants' invention. Still further, neither JP '783 nor Nagai bond the gasket, or more particularly, the metal sheet within the gasket, to the adjacent components. Thus, the references do not point to a pillow structure formed of bonded metal sheets that are in turn bonded to the adjacent components to form a seal, in accordance with Applicants' invention as recited in claim 5.

Accordingly, it is respectfully requested that the rejection of the claim 5 based upon Nagai and JP '783, be reconsidered and withdrawn, and that the claim be allowed.

*Claim Rejection based upon Nagai in view of Franklin et al.*

Claim 5 was rejected under 35 U.S.C. § 103 as unpatentable over Nagai in view of United States Patent Application Publication US 2004/0053099, by Franklin et al. .

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For all the reasons set forth above, the metal spacer embedded in the polymer sheets with the separated gasket elements in Nagai does not suggest a gasket formed of metal sheets with a pillow structure that is bonded to the adjacent components, and so does not show Applicants' invention in claim 5.

Franklin et al. is applied to show a gasket for a fuel cell that includes a plastic polymer material, an elastomeric material, a composite material, a metallic material, a foam material or combinations thereof. However, Franklin et al. does not point the practitioner to eliminate the spacer in Nagai. Nor does Franklin et al. point the practitioner to replace the compliant polymer sheets in Nagai with metal sheets and/or form the pillow structure in Applicants' gasket. Nor does Franklin et al. point the practitioner to bond the spacer region in Nagai to the adjacent components, instead of using the remote gaskets provided by Nagai for the purpose of sealing the gap. Thus, even if combined, the references do not suggest Applicants' invention as set forth in claim 5.

Accordingly, it is respectfully requested that the rejection of the claim 5 based upon Nagai and Franklin et al., be reconsidered and withdrawn, and that the claim be allowed.

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*Rejection of Claims 6 and 7*

Claims 6 and 7 were rejected under 35 U.S.C. § 103 as unpatentable over Nagai in view of Wakamatsu, or JP '783 or the combination of Franklin et al. and United States Patent Application Publication No. US2004/0150162, by Inagaki et al.

Claims 6 and 7 are dependent upon claim 5. For all the reasons set forth above, the Nagai structure with the metal spacer within the polymer sheets does not suggest to form a gasket of metal sheets, to provide a pillow structure with a gas-filled chamber, and to bond the pillow structure to the adjacent components to form a sealed joint. Without these features, Nagai does not show Applicants' invention in claim 5.

Also for the reasons set forth herein, Wakamatsu et al., JP '783, and Franklin et al. do not lead the practitioner to eliminate the spacer in Nagai, replace the polymer sheets with metal sheets, bond the metal sheets to the adjacent components, and eliminate the gaskets shown in Nagai. Without this, the secondary references do not lead the practitioner from Nagai to Applicants' invention in claim 5.

Inagaki et al. is applied to disclose a seal in a fuel cell for a vehicle. However, Inagaki et al., like the other secondary references, does not show a gasket formed of metal sheets and including a gas-filled pillow structure that is diffusion bonded to the adjacent components,

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and so does not make up the short comings of Nagai.

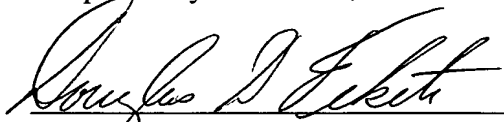
Thus, the combined references do not suggest Applicants' fuel cell assembly in claim 5. It follows then that they cannot show the fuel cell assembly in claims 6 and 7 dependent upon claim 5.

Accordingly, it is respectfully requested that the rejection of the claims 6 and 7 be reconsidered and withdrawn, and that the claims be allowed.

#### **VIII. CONCLUSION:**

For the reasons herein, it is respectfully requested that the rejections based upon Nagai combined with the other references be overturned, that the claims 5-7 be allowed, and that the case proceed to issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas D. Fekete", written over a horizontal line.

Douglas D. Fekete

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APPENDIX A

CLAIMS

1-4. (Cancelled)

5. (Previously Presented) A fuel cell assembly comprising,  
first and second components in spaced, parallel relationship, and  
a gasket disposed between said first and second components, said gasket being  
formed of first and second sheet metal elements and including  
a planar region having an opening therein for passage of gas between said first and  
second components, said first and second sheet metal elements being bonded at said  
planar region, and  
a pillow structure surrounding said opening and extending from said planar region,  
said pillow structure defining a gas-filled chamber enclosed with said first and second  
sheet metal elements and being diffusion bonded to said first and second components to  
form a sealed joint therebetween.

6. (Original) A fuel cell assembly in accordance with Claim 5 wherein said  
assembly is an auxiliary power unit for a vehicle.

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7. (Original) A fuel cell assembly in accordance with Claim 6 wherein said vehicle is selected from the group consisting of car, truck, boat, ship, airplane, and space vehicle.

8. (Cancelled)

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### **Evidence Appendix**

There is no evidence submitted during this application under 37 CFR 1.130, 1.131 or 1.132 or any evidence entered by the Examiner and relied upon by Applicants in the appeal.

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**Related Proceedings Appendix**

There are no related appeals or interferences pending during this appeal.